THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.25047 AND 25048 OF 2006

DATED 04th DECEMBER, 2006

BETWEEN:

Busa Parshaiah and others

… Petitioners

AND

The Mandal Revenue Officer, Karimnagar and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.25047 AND 25048 OF 2006

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COMMON ORDER:

The petitioners who are sixteen (16) in number in W.P.No.25047 of 2006 claimed to be landless poor persons. Some of them also claim to have been rendered landless as a result of submergence of their lands in lower Maneru Irrigation Dam. They were allegedly granted land admeasuring Acs.25.00 (out of Acs.257.00) in survey No.116 of the Kamanpur village in 1980 by the then Tahsildar. All of them were statedly allotted land admeasuring Acs.1.00 each, which they have been cultivating. They also augment their income by taking up work as farm labour and shepherd.

The Mandal Revenue Officer (MRO), the first respondent herein, initiated steps for resumption of the land in accordance with conditions of assignment. A show cause notice was issued on 06.05.2006 calling upon the petitioners to explain as to why the land should not be resumed for public purpose. All the petitioners submitted their explanations. Some of them also contended that they developed the land, dug a borewell and cultivating the land, and therefore, their land may be excluded from the

resumption proceedings and the remaining land in survey No.116 may be taken. Considering the explanations, the MRO passed orders on 03.10.2006 ordering resumption of the land for public purpose to wit for provision of house sites to the poor. The MRO also observed that all the petitioners would be paid *ex gratia/*compensation at market value with 30% solatium, and also compensation for trees and structures as per the orders of the High Court. These proceedings of the MRO are assailed in the writ petition.

In W.P.No.25048 of 2006, the two petitioners assail similar orders but the facts are slightly different. They allege that they are residents of Chintakunta village, which supports a particular political party and therefore, land is sought to be resumed with a *mala fide* intention depriving their livelihood.

Learned counsel for petitioners submits that resumption of the land from the petitioners, who were assigned land as project displaced persons, is arbitrary. If the land is resumed, about 500 persons will be adversely affected and the MRO did not consider the explanations properly. He also contends that some of the petitioners have raised residential portions, and if the land is resumed they will be deprived of their shelter as well as livelihood. It is brought to the notice of the Court that the order dated 08.11.2006 passed by Division Bench in W.A.M.P.No.2444 of 2006 in W.A.No.1177 of 2006.

The learned Assistant Government Pleader for Revenue (Assignment) submits that before resuming the land in terms of conditions of assignment, the MRO issued show cause notices, that all the petitioners submitted explanations and that after considering explanations, the impugned orders are passed. Therefore, he would urge that when proper and fair procedure is followed before cancelling the pattas and resuming the land informing the petitioners that they would be paid compensation at the market rate, no interference is called for. He placed strong reliance on the decision of the Full Bench of this Court in **LAO-cum-RDO, Chevella Division, Domalaguda, Hyderabad v Mekala Pandu** and a decision rendered by this Court in **P.Mallaiah v Government of A.P**.

This Court has considered the submissions carefully. The power of judicial review on administrative decisions is restricted to examine the question whether the public authority failed to deal with the issues fairly before arriving at a decision, which adversely burdens the rights of the citizens. The Court is not concerned with the decision itself. In the constitutional Governance, Executive has the power to balance the competing rights and interests before embarking on a programme, which perceives to be in the larger public interest. In the two cases on hand, the land assigned to the petitioners, allegedly three to four decades ago, is resumed for providing house sites to landless and poor homeless persons. The Court cannot sit in Judgment over the good or bad of the programme of distribution of house sites. The next question would be whether any right of the assignees is violated.

It is no gainsaying that the State as a grantor can always deprive the grantee of the benefit of the land. When the land is assigned as a grant by the State, whether or not there is a condition in the terms of grant, the State can always resume the land from the grantee subject to the conditions contained in the order of grant (**Calcutta, South Satara v L.M.Deshpande** and **S.V.V.S.V.Wadia v State of Sourashtra**). In fact the question of payment of compensation to the assignees, whose land is resumed by the Government, was considered by this Court. The three Full Benches of this Court in **State of A.P. v P.Peda Chinnayya**, **State of A.P. v Bondapalli Sanyasi** and **Mekala Pandu** (supra) have recognised the principle that the State

which assigns the land can always resume the land for public purpose. The question, whether the claimants are entitled to payment of compensation under the provisions of Land Acquisition Act, 1894 when the assigned lands are resumed by the Government for public purpose, was considered in **Mekala Pandu** (supra).

In **Mekala Pandu** (supra) while overruling **Bondapalli Sanyasi** (supra) held:

> In the circumstances, we hold that the assignees of the Government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on part with full owners of the land even in cases where the assigned lands are taken possession of by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. We further hold that even in case where the State does not invoke the covenant of the grant or patta to resume the land for such public purpose and resorts to acquisition of the land under the provisions of the Land Acquisition Act, 1894, the assignees shall be entitled to compensation as owners of the land and for all other consequential benefits under the provisions of the Land Acquisition Act, 1894. No condition incorporated in patta/deed of assignment shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land.

The impugned order in these cases informs the petitioners that they would be paid *ex gratia*/compenstion at market value with 30% solatium. Therefore, the action of the respondents in issuing the impugned order whereunder assignment is cancelled and the land is resumed is in accordance with law laid down by the Full Bench of this Court in **Mekala Pandu** (supra). This needs little clarification in view of the decision of the **Mekala Pandu** (supra).

It is brought to the notice that feeling aggrieved by **Mekala Pandu** (supra), the State preferred an appeal before the Supreme Court and obtained interim order of stay of further payment of compensation. Therefore, though the petitioners are entitled to claim compensation as per the provisions of the Land Acquisition Act including solatium, additional compensation and interest, the Mandamus that shall issue to that effect shall be enforceable subject to the Judgment of the Supreme Court in appeal filed against **Mekala Pandu** (supra).

Learned counsel for the petitioner brought to the notice of this Court the interlocutory order passed by the Division Bench of this Court in W.A.M.P.No.2444 of 2006 in W.A.No.1177 of 2006. These writ petitions are being dismissed following the three Full Bench decisions of this Court and therefore, the interlocutory order relied on by the counsel is of no assistance. In view of the three Full Bench decisions of this Court, the writ petitions are liable to be dismissed.

The writ petitions are accordingly dismissed as devoid of any merit. There shall be no order as to costs.

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(V.V.S.RAO,J)

04.12.2006.

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